

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RANDLE GRIFFIN,

Plaintiff,

v.

LOUIS CONDON, et al.,

Defendants.

HONORABLE JOHN CORBETT O'MEARA

No. 11-14876

JURY TRIAL - VOLUME 1

Tuesday, January 17, 2017

Appearances:

Brandon C. Hubbard
Wade Fink
Nolan John Moody
Jessica L. Russell
Dickinson Wright, PLLC
500 Woodward Avenue, #4000
Detroit, Michigan 48226
(313) 223-3500
On behalf of Plaintiff

Clifton B. Schneider
Michigan Dept. of Att. General
P.O. Box 30736
Lansing, MI 48909
(517) 373-6434
On behalf of Defendants

- - -

To obtain a certified transcript, contact:
Sheri K. Ward, Official Court Reporter
Theodore Levin United States Courthouse
231 West Lafayette Boulevard, Room 219
Detroit, Michigan 48226
(313)965-4401 • ward@transcriptorders.com

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Detroit, Michigan
Tuesday, January 17, 2017
9:07 a.m.

- - -

THE CLERK: The court calls the matter of
Randle Griffin v. Louis Condon, et al., Case Number 11-14876.

THE COURT: Counsel, please put your appearances on
the record.

MR. FINK: Good morning, Your Honor. Wade Fink on
behalf of the plaintiff, Randle Griffin.

THE COURT: Good morning.

MR. MOODY: Good morning, Your Honor. Nolan Moody on
behalf of the plaintiff, Randle Griffin.

THE COURT: Good morning to you.

MR. HUBBARD: Good morning, Your Honor.
Brandon Hubbard on behalf of the plaintiff, Randle Griffin.

THE COURT: Good morning to you.

MS. RUSSELL: Good morning, Your Honor.
Jessica Russell on behalf of the plaintiff, Randle Griffin.

THE COURT: Good morning to all of you.

And for the other end of the table here.

MR. SCHNEIDER: Good morning, Your Honor.
Cliff Schneider from the Attorney General's Office on behalf of
Defendants Downard, McMurtrie and Condon.

THE COURT: And all three defendants are standing

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1 next to you?

2 **MR. SCHNEIDER:** Yes, Your Honor.

3 **THE COURT:** Thank you. You can sit down for a
4 minute.

5 I understand, and I'm surprised as well as gratified, that
6 the members of the jury who are noticed to be here today are
7 actually here on time even though there's some bad weather out
8 there, and I have some preliminary things to discuss with all
9 of you. Please, if you have questions about them, raise the
10 questions.

11 Sequestration. Either, any party asking for sequestration
12 of witnesses?

13 **MR. FINK:** No, Your Honor.

14 **MR. SCHNEIDER:** No, Your Honor.

15 **THE COURT:** No sequestration.

16 Jury instructions. I know that in the -- have you got
17 something there?

18 **THE CLERK:** Yeah, hiding under there.

19 **THE COURT:** Thank you. They are here.

20 The length of opening may not, may not be much of a
21 problem, I take it, for the defendants. There is one lawyer
22 and presumably the length would be 15 minutes. I'll limit you
23 to 15 minutes.

24 While there are four lawyers on the other side, they have
25 one client that is identified as such, and so I take it they

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1 can use 15 minutes of opening, too.

2 Any problem with that on either side?

3 **MR. SCHNEIDER:** No, Your Honor.

4 **MR. FINK:** No, Your Honor.

5 **THE COURT:** All right. The random jury list of which
6 you have and I have, I want to know if either the plaintiffs or
7 defendant have any problem with it. It's done with the
8 algorithm and presumably is random, but if you've got a
9 problem, let me know.

10 **MR. SCHNEIDER:** No issues from the defendants,
11 Your Honor.

12 **MR. FINK:** No issue from plaintiff either,
13 Your Honor.

14 **THE COURT:** We will, of course, put eight people in
15 the jury box, and it's my intention, unless I hear very strong
16 convincing argument coming from you, any of you that the jurors
17 shall be -- the jury of eight will be a jury of eight and they
18 will all vote. If there is some reason to dispute that, then I
19 expect I'll hear it from somebody. I'm not hearing anything.

20 I guess the last thing I want to say is that I don't want,
21 and won't permit, within limits, maybe I'll let you get the
22 question in, but I don't like once a juror has said I can be
23 fair and impartial that to be followed up with like, "What do
24 you mean by impartial? You mean you don't have any this or
25 that kind of experience?" If they say they can be fair and

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1 impartial, that's all you get as far as I'm concerned. I'm
2 hoping nobody disagrees effectively on that.

3 Is there something else either of the plaintiffs or
4 defendant would -- the plaintiff or defendants would like the
5 record to reflect as a matter of protecting the record for your
6 clients? Anything else?

7 **MR. SCHNEIDER:** Nothing for the defense, Your Honor.

8 **MR. FINK:** Not with regard to jury selection,
9 Your Honor. We have a few preliminary matters, but we can do
10 them before or after the jury. Whatever the Court prefers.

11 **THE COURT:** What are your preliminary matters? Short
12 answer.

13 **MR. FINK:** Sure. There's been a couple stipulations,
14 and there's a couple motions in limine we would like to raise.

15 **THE COURT:** There are a lot, and as near as I can
16 tell looking at the file and the history, they pretty much have
17 been handled in the same way, denied without prejudice, or they
18 have been resolved.

19 **MR. FINK:** Yes, Your Honor. There are some
20 resolutions on some of the issues. There are four outstanding
21 issues that plaintiff would ask if this Court is inclined to
22 hear it now, we think it's important to hear before a jury
23 hears a certain question or a certain line of questioning. So
24 for that reason we would like to raise it at some point before
25 we start trial if this Court is inclined to do so.

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1 **THE COURT:** I am not inclined to do so. If it comes
2 up at trial -- if somebody wants to raise it, in effect insists
3 that it be dealt with or at least have a chance to be dealt
4 with prior to trial starting, I'll listen to that, a short
5 argument, but I'm not inclined to do that. If it comes up,
6 it's going to come up in the context that it has behind it and
7 before it at trial.

8 **MR. FINK:** Yes, Your Honor. I understand. Can I
9 place the stipulations on the record that we have agreed to?

10 **THE COURT:** Yes. How much stipulation is it?

11 **MR. FINK:** Just two issues that were in the motions
12 that opposing counsel and I have since agreed to.

13 **THE COURT:** Oh, sure.

14 **MR. FINK:** The first, Your Honor, is defendants have
15 agreed in regard to our motion in limine regarding qualified
16 immunity, they certainly don't waive their right to raise it to
17 you, but they will not mention qualified immunity in front of
18 the jury as it is a legal defense.

19 And then the second, Your Honor, plaintiff has agreed not
20 to raise any physical injury as a result of an alleged assault
21 with a Prisoner Reed. In exchange, the defendants have agreed
22 not to raise anything related to the March 15 assault with
23 Prisoner Reed. If I'm mischaracterizing it, certainly
24 Mr. Schneider can respond, but those are the two things we have
25 agreed to before trial.

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1 **THE COURT:** Do you agree?

2 **MR. SCHNEIDER:** Yes, that is correct, Your Honor. I
3 agree.

4 **THE COURT:** All right. Because you are there, I feel
5 compelled to ask the question. This is not a challenge to
6 either of the people who are standing in uniform in the back of
7 the -- more or less in the back of the courtroom. I don't
8 understand -- well, I guess I'm going to ask you. Have you
9 been given instructions as to where you will stand?

10 **MR. FINK:** Myself, Your Honor?

11 **THE COURT:** No, I'm talking --

12 **MR. FINK:** Oh, to the officers, I'm sorry.

13 **THE COURT:** -- to the people who I believe are
14 official protectors.

15 **AUDIENCE MEMBER:** This is your room, sir. What would
16 you like us to do?

17 **THE COURT:** I'm sorry?

18 **AUDIENCE MEMBER:** It's your room. What would you
19 like us to do?

20 **THE COURT:** I would like you not to stand where you
21 are now. I mean, pick a place that you think is adequately
22 protective while you are seated, I believe, not while you are
23 standing. You can pick the place, but it should not be at the
24 jury box. I'm not criticizing you. I'm just saying.

25 **AUDIENCE MEMBER:** Okay, yeah.

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1 **THE COURT:** Does anybody have any problem with that?

2 **MR. FINK:** No. Thank you, Your Honor.

3 **THE COURT:** Thank you.

4 Is there anything else we should discuss as matters to be
5 addressed prior to having prospective jurors enter the jury
6 box?

7 **MR. FINK:** No, Your Honor. The plaintiff is all set.

8 **MR. SCHNEIDER:** No, Your Honor.

9 **THE COURT:** All right. Bring in the jury panel.

10 **THE CLERK:** I just called. It will be just a minute.

11 (Discussion held off the record.)

12 **THE COURT:** Well, I apologize in advance for this
13 delay. There apparently is some kind of delay with the jurors,
14 who are up on the second floor. Anyway, there isn't anything I
15 can do much about it except wait.

16 **MR. FINK:** No problem, Your Honor.

17 **THE COURT:** I didn't ask, but I will now that we have
18 no prospective jurors in the room, are you, Mr. Fink, are you
19 going to be addressing on opening argument?

20 **MR. FINK:** Your Honor, if it's okay with the Court,
21 my colleague, Nolan Moody was planning on doing opening
22 statement, and I was planning on doing closing statement.

23 **THE COURT:** That's okay.

24 **MR. FINK:** Thank you, Your Honor. And I'll be doing
25 voir dire.

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1 **THE COURT:** I have the joint jury instructions, and I
2 appreciate the fact that they are here and they are joint. I
3 am not being critical of anybody when I say to be complete we
4 need to have a form of verdict. If there's a problem with
5 that, agreeing to it, I'll be happy to listen to it.

6 **MR. FINK:** A verdict form, Your Honor?

7 **THE COURT:** Huh?

8 **MR. FINK:** Is that what you said, a verdict form?

9 **THE COURT:** Verdict form.

10 **MR. FINK:** We have competing verdict forms I can
11 submit to you at any time.

12 **THE COURT:** I don't want you to do it now, but any
13 time.

14 **MR. FINK:** Okay. Thank you, Your Honor.

15 Your Honor, I would just point out, as far as the joint
16 jury instructions, just so it's clear, there are some disputes
17 within the actual instructions. The ones that are marked
18 "joint" are what we agree on, and then there are some competing
19 instructions within the document. I just wanted to make sure
20 that was clear. Thanks, Your Honor.

21 **THE COURT:** Well, I sat up in chambers predicting to
22 myself at least that it was very unlikely that we were going to
23 get everybody we needed here more or less on time, especially
24 the jurors, because of the weather, and they allegedly arrived
25 all on time and were here, but something else is holding them

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1 up.

2 (The jury voir dire record was excerpted out at this
3 point.)

4 **THE CLERK:** Would the jurors in the jury box please
5 stand and raise your right hand.

6 (The jury was sworn.)

7 **THE CLERK:** Thank you.

8 **THE COURT:** Thank you. Please be seated again.

9 I'm going to give you a few preliminary instructions and
10 then let you go to the jury room for whatever happens in there.
11 It's there for you, and sometimes they even provide things like
12 coffee and Coke and sometimes more than that. But if they have
13 those things, then you should be grateful because they are not
14 there always, at least not this early in the process.

15 You had your voir dire. I think that -- I think we'll
16 just let you go now to the jury room and come back in here in
17 15 minutes and we'll start with my instructions to the jury and
18 then we'll go to the opening statements for the plaintiff and
19 defendant.

20 Thank you. Thank you for being here. Thank you for being
21 good citizens. Be sure you pick up whatever you've got with
22 you, a coat or something else, and take it with you to the jury
23 room.

24 (Jury out at 10:36 a.m.)

25 **THE COURT:** Is there anything further that either the

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1 plaintiff or the defendants would like the record to reflect at
2 this time?

3 **MR. FINK:** No, Your Honor, not from plaintiff.

4 **MR. SCHNEIDER:** No, Your Honor.

5 **THE COURT:** All right. Let's take 15 minutes and
6 come back. Are you generally ready, disposed to do what you've
7 got to do --

8 **MR. FINK:** Yes, sir.

9 **THE COURT:** -- after a little bit of instruction from
10 me?

11 **MR. FINK:** Yes, Your Honor. We are prepared to
12 proceed.

13 **MR. SCHNEIDER:** Yes, Your Honor.

14 **THE COURT:** All right. Court is in recess.

15 (Recess from 10:37 a.m. to 11:04 a.m.)

16 **THE COURT:** Please be seated.

17 Are both plaintiff and defendants ready for opening
18 statements?

19 **MR. SCHNEIDER:** Yes, Your Honor.

20 **MR. MOODY:** Yes, Your Honor.

21 **THE COURT:** Very well. Bring in the jury.

22 **THE CLERK:** All rise for the jury.

23 (Jury in at 11:06 a.m.)

24 **THE COURT:** Members of the jury, please be seated.
25 These are brief preliminary instructions, which you heard

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1 parts of before, but to help you as you think about what you're
2 doing in the jury room and listening to witnesses, and what
3 we're going to do after these preliminary instructions is have
4 the opening statements of the plaintiff presumably, if
5 plaintiff proceeds that way and usually they do, and defendant,
6 and then we'll go into the first witnesses for plaintiff, then
7 for defendant.

8 You have now been sworn as the jury to try this case, and
9 by your verdict you will decide the disputed issues of fact.
10 As judge, I will decide the questions of law. Before you
11 retire to deliberate at the close of the case I will instruct
12 you on the rules of law you must follow and apply in deciding
13 on your verdict.

14 Give careful attention to the testimony and evidence which
15 is presented during the trial. However, don't form any or
16 express any opinion about the case until you have heard all of
17 the evidence and have had the benefit of the closing arguments
18 of the lawyers and my instructions on the applicable law.

19 Evidence consists of the testimony of witnesses, documents
20 and other things that are received into evidence as exhibits
21 and all facts which are admitted or stipulated by the parties.
22 There are certain things which are not evidence and cannot be
23 considered by you, and they include statements, arguments and
24 questions by lawyers, and objections to questions by lawyers.

25 Lawyers have an obligation to their clients to make an

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1 objection when they believe evidence is being offered and it's
2 improper under the rules of evidence. If an objection is
3 sustained, ignore the question. If it's overruled, treat the
4 answer like any other response.

5 Any testimony you have been instructed to disregard, of
6 course you disregard and it's not evidence. Anything you see
7 or hear outside the courtroom is not evidence and must be
8 disregarded. You must decide the case solely on the evidence
9 presented here in the courtroom.

10 There are, of course, and you know this from television
11 and presumably a lot of other ways, direct and circumstantial.
12 Direct evidence is direct proof of a fact such as testimony of
13 an eyewitness. Circumstantial is proof of one fact that we may
14 infer or conclude that other facts exist. I will give you
15 further instructions on these as well as other matters at the
16 end of the case. However, keep in mind that you may consider
17 both kinds of evidence.

18 I think those are my preliminary instructions, and we are
19 ready now for opening statements if you are prepared, sir.

20 **MR. MOODY:** We are, Your Honor. Thank you, sir.

21 **THE COURT:** You can adjust the lectern if you want
22 to.

23 **MR. MOODY:** Ladies and gentlemen of the jury, good
24 morning. My name is Nolan Moody. As you have previously met,
25 over here is my colleague Wade Fink. Brandon Hubbard and

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1 Jessica Russell, my other colleagues. Together the four of us
2 are going to present to you evidence in this mater, but before
3 I begin I want to start just by thanking each of you for your
4 civic duty.

5 **THE COURT:** Can the members of the jury hear? As
6 long as you can, that's fine. As long as I can, that's fine.

7 **MR. MOODY:** Do you want me to move closer?

8 **THE COURT:** Go ahead.

9 **MR. MOODY:** All right. We wanted to start by
10 thanking each one of you. Judge O'Meara said it much more
11 eloquently than I will, but this is really the highest form of
12 civic duty that you can perform, and we cannot administer our
13 justice system without your cooperation. So thank you from all
14 of us for taking time out of your schedules to be here.

15 As I mentioned a moment ago, my colleagues are over to my
16 right. You will meet each of them throughout this case, as
17 they will all present evidence and testimony of the plaintiff's
18 position in this matter. It's my anticipation that you are
19 probably going to forget my name. You are probably going to
20 forget all of my colleagues' names along the way. That's okay.
21 We are not important to this case. But there is one name I
22 would ask you to remember, and that's Randle Griffin, the
23 gentleman sitting at counsel table right now.

24 The reason why I want you to remember his name? Because
25 Mr. Griffin is a person just like you and me that is entitled

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1 to defend his right to free speech. As you heard Judge O'Meara
2 and my colleague, Mr. Fink, mention earlier, our client,
3 Mr. Griffin, is a prisoner so that's why I mention it. Just
4 because he is a prisoner does not mean he is not entitled to
5 defend his right to free speech.

6 Mr. Griffin was convicted of second-degree murder 26 years
7 ago and has been incarcerated since. He has been and will
8 continue to pay for the conviction of that crime, but the
9 conviction of that crime is not why we are here today. We are
10 not here because Mr. Griffin has spent the majority of his life
11 in the prison system.

12 We are here because of the actions of these
13 three defendants. We are here because these three defendants,
14 who are all correctional officers at the Gus Harrison
15 Correctional Facility in Adrian, Michigan in 2011, conspired
16 to, and subsequently did, retaliate against our client, who was
17 an inmate at that time at Gus Harrison, for reporting an
18 assault that he witnessed one of the defendants commit on
19 another inmate.

20 We will present to you evidence which shows to you that
21 the Gus Harrison Correctional Facility has a systemic and
22 cultural problem of abusing its prisoners. The officers
23 verbally and physically harass their prisoners. They issue
24 false misconduct tickets, and worse, when the prisoners try to
25 stand up against that system, things get even worse for them.

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1 That's what happened to our client, Randle Griffin, in this
2 case. You are going to hear from Mr. Griffin. He's going to
3 take the stand shortly after I'm done, and he's going to tell
4 you what happened.

5 You are going to learn about another inmate by the name of
6 Jeffrey Bryant, who suffered the same harassment as many other
7 prisoners have at Gus Harrison. You are going to learn that
8 Randle witnessed Mr. Bryant state to officers that he wanted to
9 go to protective custody. And, instead of being allowed to do
10 so, he was physically restrained from going and assaulted by
11 the defendant Officer Condon.

12 What happens from there is truly why we are here. You
13 will learn that shortly after that incident the inmate,
14 Mr. Bryant, filed a complaint and an investigation was opened
15 by the ombudsman's office.

16 The ombudsman is an arm of the State of Michigan that
17 investigates the actions of officers to determine whether their
18 conduct was appropriate with regard to prisoners. When that
19 investigation was opened, Mr. Griffin did what few other
20 prisoners are willing to do. He stood up against the guards,
21 he stood up for his friend, and he reported what he saw.

22 Once these defendants learned about what he had done, they
23 conspired to and retaliated against him for exercising his
24 First Amendment right to report that assault. That is why we
25 are here.

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1 You will learn through testimony from Mr. Griffin that is
2 then confirmed by other evidence and other witnesses that on
3 March 2nd, 2011 Mr. Griffin had a conversation with the
4 defendant Officer Condon. Officer Condon told Mr. Griffin that
5 because he was reporting his conduct it was going to "bite him
6 in the ass."

7 No less than a few minutes later you are going to hear
8 witnesses confirm that all three defendants were overheard in
9 the prison conspiring to retaliate against Mr. Griffin. They
10 were going to write false misconduct tickets against him
11 because he was trying to change the system.

12 You are then going to find out that that very same night
13 another defendant, Officer Downard, in fact wrote a false
14 misconduct ticket against Mr. Griffin. The next day the other
15 defendant, Officer McMurtrie, wrote another false misconduct
16 ticket against Mr. Griffin. In fact, that second misconduct
17 was actually dropped just one day later.

18 You are then going to learn perhaps the most egregious
19 conduct of all. Mr. Griffin was first laid in in his cell for
20 those misconduct tickets. That means he can't leave his cell.
21 He can't go out in the yard. He can't go out and use any level
22 of liberty that he has left. Mr. Griffin lost his prison job
23 as a result of those misconduct tickets.

24 And then, worst of all, Officer Downard went to
25 Mr. Griffin's room, Mr. Griffin's cell. He cornered

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1 Mr. Griffin, and in a threatening manner he stood over him and
2 told him that because he was reporting Officer Condon he was
3 going to beat his ass, throw him in a hole, and then, as loudly
4 as he could, he yelled for the whole prison to hear that he was
5 "a fucking rat."

6 You are going to hear from Mr. Griffin. He's going to
7 tell you if you are a rat in prison it's the single-most
8 dangerous thing you can be. You are immediately in fear of
9 your life when other inmates consider you to be a rat. That
10 was done by Officer Downard. All of this conduct was done as a
11 result of Mr. Griffin reporting what he had seen Officer Condon
12 do.

13 Now, what does that amount to? What does that lead us to
14 ask from you, the jurors? We are bringing two claims in this
15 case against all three defendants. The first is retaliation of
16 Mr. Griffin's First Amendment rights.

17 In order for us to prove that, we need to show you
18 three elements. The first element is that the plaintiff
19 engaged in constitutionally protected activity. Mr. Griffin
20 participated in the ombudsman's investigation into this case.
21 That is constitutionally protected activity.

22 The second element is that an adverse action was taken
23 against Mr. Griffin that would deter a person of ordinary
24 firmness from continuing that conduct. We need look no further
25 than all of the actions by the officers that were done to deter

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1 Mr. Griffin from reporting what he had seen.

2 And then, finally, the third element that we need to show
3 you is that there was a causal connection between Mr. Griffin's
4 speech and the adverse action taken by the officers. Again,
5 the circumstances dictate that this was very clear.

6 Officer Condon told Mr. Griffin it was going to "bite him
7 in the ass" for reporting what he had seen. Then you have
8 other officers write false misconduct tickets, and they say
9 things to Mr. Griffin to further threaten him for what he has
10 done. That is a causal connection.

11 The second claim we are going to bring is a charge of
12 conspiracy. A charge of conspiracy has four elements that we
13 will show you. The first is that there was a single plan or
14 agreement.

15 Again, you will hear from witnesses. They will tell you
16 that they overheard all three defendants agreeing to write
17 false misconduct tickets against Mr. Griffin because he was
18 trying to change the system, and this comes only moments after
19 Officer Condon had a conversation with Mr. Griffin about him
20 reporting Officer Condon.

21 We need to show you the second element, which is that the
22 defendants had a conspiratorial objective. Again, the same
23 circumstances apply. Based on the time of everything happening
24 over just a three-day period, based on the conversations that
25 Mr. Griffin had with Officer Condon, these are very clearly an

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1 objective on behalf of all of the defendants to deter
2 Mr. Griffin from reporting what he had seen.

3 The third element we need to show you is an overt act, an
4 overt act that is in furtherance of the conspiracy. Again, I
5 have already listed for you a number of overt acts: Threats,
6 false tickets, calling someone a rat for the whole prison to
7 hear, laying the prisoner in so they can't leave their cell.
8 Any one of these is an overt act that constitutes a furtherance
9 of the conspiracy.

10 Finally, the fourth element I need to show you is an
11 injury. Here I need to show you a constitutional injury. I
12 think many of us know that the Constitution allows all of us to
13 have a right to free speech. That includes Mr. Griffin.
14 Mr. Griffin had a right to participate in that investigation.
15 When he was retaliated against for participating, he was
16 injured and he suffered a constitutional injury.

17 Those are the two counts. We need to prove that evidence
18 to you by a preponderance of the evidence. What that means is
19 we need to show you that it is more likely than not that this
20 occurred than it didn't. For those that like math, that's
21 50.1 percent more likely that it occurred than it didn't.

22 Now, Mr. Griffin is going to take the stand, as I
23 mentioned. We are going to provide evidence and witnesses to
24 confirm Mr. Griffin's testimony. Then, after that, it's my
25 anticipation that the defense is going to call each one of the

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1 defendants to the stand, and I can tell you that if they do
2 that those defendants are going to deny to a man every
3 allegation leveled against them.

4 So you jurors are going to have a choice. You are going
5 to have to make a decision. Do you believe Mr. Griffin or do
6 you believe the defendants? As the defense would rather you
7 put it, do you believe the prisoner or do you believe the
8 officers?

9 I can tell you where Mr. Griffin stands on this. If you
10 listen to the evidence and you decide that we have not proven
11 to you by a preponderance of the evidence that these events
12 occurred, Mr. Griffin is going to be satisfied with the
13 outcome.

14 What Mr. Griffin will not be satisfied with and what we as
15 lawyers will be heartbroken about is if you determine right now
16 before you hear the evidence that Mr. Griffin is not entitled
17 to defend his right to a First Amendment claim simply because
18 he is a prisoner. Mr. Griffin has that right.

19 They say that a civilization is judged by how we treat our
20 least fortunate, our least able. Certainly that would include
21 our prisoners. I'm asking you to treat Mr. Griffin with the
22 respect that these defendants did not. Give him his day in
23 Court. Listen with open ears to what he has to say. Listen to
24 the witnesses that confirm his story. Listen to the other
25 evidence that confirms his story. If you do that, I can

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1 promise you that the man Randall Griffin, not the prisoner, the
2 man Randall Griffin will be satisfied with whatever judgment
3 you reach. Thank you.

4 **THE COURT:** Thank you.

5 For the defendants?

6 **MR. SCHNEIDER:** Thank you, Your Honor.

7 Good morning. This is one of two chances that I'm going
8 to have to speak with you directly. You saw the plaintiff's
9 opening statement. I get to do mine. After this you are going
10 to hear the testimony from the witnesses. I think we will get
11 to a little bit of that this afternoon, and then over the
12 course of the next few days we'll hear other witnesses. When
13 we're done with that, the attorneys will get back in front of
14 you like this again, and we'll be doing our closing arguments.

15 Right now what I want to do, I want to briefly summarize
16 what the evidence in this case is going to show, which you are
17 going to see here in court over these next few days. I want
18 you to keep in mind throughout this trial that it is the
19 plaintiff's burden of proof to prove his case. It's not the
20 defendants' burden to disprove it. The judge will instruct you
21 on the law of this case, and that will be part of it.

22 Now, the plaintiff in this case, he claims that the
23 defendants were out to get him because he talked to the
24 ombudsman. You are going hear from the defendants. They don't
25 know what the ombudsman is. They wouldn't recognize any staff

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1 from the ombudsman's office if they met them on the street. In
2 addition, even if the plaintiff did have contact with the
3 ombudsman, there's no way that the defendants would know about
4 that.

5 Now, the plaintiff is claiming that as a result of this
6 contact with the ombudsman's office he suffered threats, being
7 called a rat, and tickets. Now, the defendants are going to
8 testify and the evidence will show that they never made any
9 threats against the plaintiff. They never called him "rat."

10 On March 2nd, 2011 Officer Downard did write the plaintiff
11 a ticket. He was supposed to be at his job at work, and the
12 plaintiff wasn't and he didn't show up so Officer Downard wrote
13 him an out-of-place ticket.

14 Now, in prison when you get a ticket like that, you are
15 laid in from your job. That means you don't get to go to work
16 the next day. You have to sit in your cell.

17 On that next day, March 3rd, Officer McMurtrie saw that
18 plaintiff wasn't at work and wrote him a second ticket. That
19 ticket did not go to hearing. On the subsequent day, Officer
20 McMurtrie talked to the sergeant about it and had the ticket
21 dismissed. They just ripped it up. It was gone. Nothing came
22 of it.

23 Now, at the end of the case, like I said, after you have
24 heard all of the evidence, I'm going to get back up here and
25 summarize the evidence you have heard and seen in light of the

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1 law that the judge is going to tell you about. At that time
2 I'm going to ask you to return a verdict in favor of the
3 defendants and award the plaintiff nothing. Thank you.

4 **THE COURT:** Thank you.

5 Your first witness?

6 **MR. FINK:** Yes, Your Honor. The plaintiff calls
7 Randle Griffin to the stand.

8 - - -

9 **RANDLE GRIFFIN,**

10 being first duly sworn to tell the truth,
11 was examined and testified upon his oath
12 as follows:

13 - - -

14 (11:26 a.m.)

15 **DIRECT EXAMINATION**

16 **BY MR. FINK:**

17 **Q.** Good morning, Mr. Griffin.

18 **A.** Good morning.

19 **Q.** Mr. Griffin, I'm going to ask you questions, and to the
20 extent you don't understand anything or if I wasn't clear,
21 please ask me to repeat the question and I would be happy to do
22 that.

23 Mr. Griffin, where do you currently reside?

24 **A.** At the St. Louis Correctional Facility, St. Louis,
25 Michigan.

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1 Q. Would you speak up just a little bit.

2 A. At the St. Louis Correctional Facility in St. Louis,
3 Michigan.

4 Q. And where were you before that?

5 A. At the Oaks Correctional Facility.

6 Q. How about before that?

7 A. Kinross Correctional Facility.

8 Q. And are these multiple facilities? Why have you been in
9 so many facilities?

10 A. Because they transfer you whenever they get ready to
11 transfer you.

12 Q. How many times would you say you have been transferred?

13 A. About 15.

14 Q. 15 different facilities?

15 A. Yeah.

16 Q. How old are you, Randle?

17 A. Forty-eight.

18 Q. Are you married?

19 A. Yes.

20 Q. When did you get married?

21 A. 2002.

22 Q. While you were incarcerated?

23 A. Yes.

24 Q. Do you have kids?

25 A. Yes.

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1 Q. How many kids do you have?

2 A. Four.

3 Q. Do they visit you in prison?

4 A. Yes, when I'm closer to home because I don't allow them to
5 come across to prison when I'm up north.

6 Q. Sometimes you are far up north?

7 A. Yes.

8 Q. Do you have friends, Mr. Griffin, inside or outside the
9 correctional system?

10 A. Yes.

11 Q. Can you describe your friendships in prison?

12 A. Friendships, they really are hard to come by, but when you
13 find a good friend in prison, they are there for you, and if
14 you need anything, they will be there for you and vice versa.

15 Q. You do have friends in the correctional facility?

16 A. Yes.

17 Q. As far as your personal life, Randle, Mr. Griffin, in a
18 correctional facility, do you have hobbies or certain things
19 that you enjoy doing?

20 A. Yes. I enjoy working because it give me a sense of
21 responsibility and allows me to be independent. I like
22 reading. I like studying the law. I like helping the young
23 guys. I take them under my wing, and I teach them how to read
24 and write. When I came to prison, I couldn't read or write so
25 the older guys helped me. So I just pay it forward and help

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1 these young guys to get their GEDs so they have a purpose when
2 they get back into society.

3 Q. You taught yourself to read and write?

4 A. Yes.

5 Q. You couldn't read or write at all when you went into
6 prison?

7 A. No.

8 Q. Do you take on any leadership roles as an inmate at the
9 correctional facility?

10 A. Yes.

11 Q. In what capacity?

12 A. As warden forum representative.

13 Q. And we'll get into more of that later, but very briefly,
14 what is the warden's forum committee?

15 A. It's an advisory committee to the warden where we solicit
16 issues from prisoners and take them to the warden to resolve.

17 Q. You speak on behalf of the prisoners?

18 A. Yes. All the time, yes.

19 Q. Mr. Griffin, do you have any certificates or training type
20 permissions or grants in prison?

21 A. Yes. I have a food technology certificate, custodial
22 maintenance, food handling certificate, blood borne pathogen
23 certificate, and a few others, a variety of them.

24 Q. How do you get those certificates?

25 A. You have to go through training, vocational classes that

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1 they have in the prison.

2 Q. In prison?

3 A. Yes.

4 Q. And you went through those classes and received those
5 certificates?

6 A. Yes.

7 Q. Do you have your GED?

8 A. Yes.

9 Q. Did you get that while you were incarcerated?

10 A. Yes.

11 Q. Mr. Griffin, how old were you when you were first
12 incarcerated?

13 A. 22.

14 Q. You've been in prison 26 years?

15 A. Yes.

16 Q. What was your conviction for?

17 A. Second-degree murder.

18 Q. What was your sentence?

19 A. Life.

20 Q. In those 26 years in prison -- you're 48 now, you were 22
21 then -- have you changed at all?

22 A. Significantly.

23 Q. In what ways?

24 A. Although my adjustment to prison was hard, I realized fast
25 that this was my life now so I just learned to accept it, but I

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1 understood the likelihood of me being in prison for the rest of
2 my life was probably significant, and I guess I was running
3 with the wrong people so I had to just accept that. But it's
4 hard. Excuse me.

5 Q. Take your time. You are talking about 26 years in prison
6 and to the extent you feel that you've changed in those
7 26 years.

8 A. Yes. Yes, I have changed significantly. You know, I've
9 devoted my time to, you know, helping others, and that's mostly
10 what my time go to. And anytime someone needs my assistance I
11 try to be there for them.

12 Although I am serving a life sentence, by no means do I
13 like it in prison. I still fight to get out of prison all the
14 time because I still profess my innocence.

15 Q. It's likely the case that you will spend the rest of your
16 life in prison?

17 A. Yeah.

18 Q. What's important to you in your life in prison?

19 A. Well, shoot. You know, we don't have that much in prison.
20 You learn fast that your life is really small, but you have to
21 find purpose. If you don't have a purpose in prison, you
22 just -- most guys go crazy, kill themselves or just get on
23 medication and lose their mind.

24 But I find purpose in working. Every job I have had since
25 I been locked up, I always got good work reports. I find

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1 purpose in, again, you know, helping others, reading, studying,
2 just walking around, you know, just having piece of mind, you
3 know, in the community because we have our own community in
4 prison. Certain guys, older guys be together, we band
5 together. We walk around the yard together. We talk. When
6 one is down, the other one lift them up. So my purpose is
7 really, Your Honor, just to try to stay busy and find a place
8 where I can call home, where I can create a life. You know, in
9 prison it's hard, but you have to create a life in prison.

10 **Q.** You said your work gave you purpose. Can you explain what
11 you mean by your job gave you purpose?

12 **A.** Well, the job gave me purpose because every day that I got
13 up I had a sense of responsibility that I knew I had to
14 complete this job. And I took pride in every job that I had,
15 whether they tell me to clean the floors, cook in the kitchen
16 or go in the yard and rake leaves up or just go outside and,
17 you know, help out with shoveling snow. Whatever job I have, I
18 try to do my best, and that gives me purpose.

19 **Q.** The warden's forum that you described earlier, which is
20 kind of a leadership council, does that give you purpose?

21 **A.** Yes. It allows me to have a voice and, you know, help
22 others that -- because most of the guys that come to prison,
23 they don't know how to resolve their issues in a more peaceful
24 manner so that's why we have the warden's forum so we can
25 resolve before anything get out of hand.

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1 So I go up and I speak on behalf of the guys in my block.
2 That's why it's called block representative. I go up and
3 discuss the issues with the warden.

4 **Q.** We'll get more into that later. As a general matter in
5 your prison life, what's been your experience with correctional
6 officers?

7 **A.** In my experience most of them is good guys. Most
8 corrections officers are good guys. They treat you humanely,
9 you know, but there are some mean-spirited folks who try to
10 treat you like you're not human.

11 **Q.** Mr. Griffin, do you remember where you resided
12 approximately September 2011?

13 **A.** September I was at the Adrian correctional facility.

14 **Q.** What is that facility called, if you know?

15 **A.** Gus Harrison.

16 **Q.** Gus Harrison Correctional Facility?

17 **A.** Yes.

18 **Q.** Do you remember being transferred around September of
19 2011?

20 **A.** Yes, I was transferred from there to the Lakeland
21 Correctional Facility.

22 **Q.** In September of 2011 when you first arrived at the Gus
23 Harrison Correctional Facility in Adrian, Michigan, the
24 correctional facility at issue in this case, what did you
25 observe about the environment there?

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1 **A.** Well, I was transferred there in September of 2010.

2 **Q.** I'm sorry, you are correct. 2010 is what I meant to say.
3 September 2010.

4 **A.** Yes.

5 **Q.** What did you observe about the environment in September of
6 2010 when you were transferred to the Gus Harrison Correctional
7 Facility?

8 **A.** Well, actually, as far as I was concerned, it was a
9 peaceful environment. I had no problems with other prisoners,
10 officers, anything. It was peaceful. I kind of settled in and
11 made it my home. And I just -- it was all right. No problem.

12 **Q.** How would you describe your relationship in the
13 September 2010 time frame over those next months that came
14 after, how would you describe your relationship with
15 correctional officers at the Gus Harrison Correctional
16 Facility?

17 **A.** When I got there?

18 **Q.** When you first got to the Gus Harrison Correctional
19 Facility and, as you said, you were building your life, what
20 was your relationship with the corrections officers when you
21 first got there?

22 **A.** Oh, I had a beautiful relationship with the corrections
23 officers. They respected me. I would greet them, you know,
24 they would greet me back. Good morning, good morning. And I
25 go about my way. It was okay, good, you know. Nice, nice

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1 relationship.

2 Q. Let's get in a little bit about your life at Gus Harrison.
3 If you know, Mr. Griffin, how does a housing unit work at a
4 correctional facility such as Gus Harrison?

5 A. Well, you are assigned a housing unit, and that's where
6 you reside. You are in a lock, which is a cell, and that's
7 where you are.

8 Q. Where did you reside at Gus Harrison Correctional
9 Facility?

10 A. I locked in 2 unit.

11 Q. Housing Unit 2?

12 A. Excuse me, yes.

13 Q. And, if you know, what are the distinctions between
14 housing units, like why would one person be assigned to
15 one unit and another person to a different unit?

16 A. Well, they have, they have two different levels. Actually
17 they have three different levels. They had Level 1, Level 4,
18 and Level 2. Level 1 is the lowest you have. Then you have
19 Level 2 housing, which is next like medium security, where you
20 have a lot more freedom. We have a lot more freedom. We walk
21 around. We have keys to our cell.

22 Q. So when you say -- I'm sorry to interrupt you -- when you
23 say levels, is that security classification?

24 A. Yes.

25 Q. And what was your security classification at Gus Harrison

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1 Correctional?

2 **A.** Level 2.

3 **Q.** Level 2?

4 **A.** Yes.

5 **Q.** Which is on the lower end of the spectrum?

6 **A.** Yes.

7 **Q.** What is the highest?

8 **A.** Well, let's see. I think it's just 5 now.

9 **Q.** And the lowest is 1?

10 **A.** One.

11 **Q.** You started to describe it and I interrupted you, so
12 please explain. What comes with being security classification
13 2, privileges? What is your life like as a security 2
14 classification?

15 **A.** Security 2 classification, you are allowed to have a key
16 to your cells, two men in a room. You are allowed to go and
17 come as you please when the unit and yard is open.

18 We have three different dayrooms. We are allowed to go to
19 the dayrooms. We have a TV room and two recreation rooms. We
20 are allowed to go and watch TV, you know, sports and things
21 like that together. The other rooms, you can go play card
22 games. The other room is like a quiet room. You can play
23 chess, things like that. We have a few microwaves. You know,
24 that's basically what we have, what's going on.

25 **Q.** Let's discuss, to the extent you remember, the setup,

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1 which is important in this case, of Housing Unit 2.

2 A. Okay.

3 Q. Can you describe very broadly, and then we'll go into
4 specifics, how Housing Unit 2 of Gus Harrison is set up?

5 A. Well, when you first get to the unit, you have, you have
6 the officers there. As soon as you come in the unit, you have
7 the counselor's office here, as soon as you come in the unit.
8 You have an officer desk sits here. Then you have the RUM's
9 desk, which is the unit supervisor. Then you have another
10 counselor here. And then between those two counselors' offices
11 you have wings. You have an upper and lower on this side, and
12 you have an upper and lower on this side. And each one of
13 these counselors' office, these counselors' job is to manage
14 the prisoners on each wings.

15 Q. So the wings, is that where the cells are?

16 A. Yes.

17 Q. Okay. And the wings feed into this central location that
18 you are describing?

19 A. Yes.

20 Q. Does the central location have a name?

21 A. Base.

22 Q. It's called base?

23 A. Base, yes.

24 Q. So on base -- you said the officers' desk. Where is the
25 officers' desk as far as the base?

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1 **A.** The officers' desk sits in the center of base.

2 **Q.** Is it like a circle?

3 **A.** No, it's a square desk that sits in the center of base so
4 they can see each wing, and then the dayrooms are directly
5 behind it.

6 **Q.** What does the officers' desk look at if you're facing
7 forward at the desk?

8 **A.** Oh, they look at the counselors' office, all
9 three counselors' office and the wings.

10 **Q.** Okay. Now, if you remember the distinctions between the
11 types of correctional officers, when you describe these
12 offices, do you know which offices were on base, what it was
13 called by the MDOC?

14 **A.** Yes. You have the ARUS office.

15 **Q.** What does ARUS stand for?

16 **A.** Assistant Unit Manager.

17 **Q.** Okay. Is that a counselor?

18 **A.** Yes, a counselor.

19 **Q.** And is there another type of office on base?

20 **A.** Yes, you have the RUM office. I forgot what the
21 abbreviation stands for.

22 **Q.** You called it?

23 **A.** The RUM.

24 **Q.** RUM?

25 **A.** RUM, and that's just the unit supervisor. He's over all

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1 the counselors.

2 Q. So the RUM is in charge of the housing unit?

3 A. Yes.

4 Q. And then you have two other offices that belong to the
5 ARUS, if I understood?

6 A. ARUS, yes. One in the front and one in the back.

7 Q. And this is what the officers' desk is looking at?

8 A. Yes.

9 Q. What's behind officers' desk?

10 A. The dayrooms.

11 Q. And can the officers see the dayroom if they were to turn
12 around from their desk?

13 A. Yes. It's all glass. As soon as they turn around, it's
14 all glass. You can see everything. There's nothing that would
15 inhibit them from seeing everything going on.

16 Q. An officer who is at the officers' desk on base, from your
17 personal observation and personal knowledge, can see everything
18 in the housing unit, correct?

19 A. Yes.

20 Q. Is there more than one level to the cells, the wings you
21 described that come off the base?

22 A. Yes, you have an upper and lower. You have two upper and
23 two lower on each side. You have one on each side, one upper
24 and one lower.

25 Q. Can you describe for the jury, Mr. Griffin, your typical

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1 day at Gus Harrison Correctional Facility before all the
2 conduct that's at issue in this case, a typical day at Gus
3 Harrison prison from the time you wake up to the time you go to
4 bed?

5 **A.** Oh, okay. I usually get up about eight o'clock. I would
6 go wash up in the community bathroom, go back to my cell, get
7 dressed. Get a cup of tea. I drink tea every morning. Go to
8 the dayroom, heat that up.

9 Then I would walk outside, get some air, walk around. I
10 would go back in the unit and socialize with friends. Then we
11 had a set time where I would help the youngsters learn how to
12 read and write, prepare for their GED test.

13 Then when shift change I would get ready to do my
14 assignment. Then from there, once I complete my assignment, I
15 would go to the law library later on that night and then back
16 to the unit, shower, and then the unit is closed.

17 **Q.** Do you remember the approximate times that you were
18 permitted to do these things that you described?

19 **A.** Yes.

20 **Q.** So, for example, what time was morning yard?

21 **A.** Morning yard was like from I think like 6:30, 7:00 o'clock
22 to about 10:30.

23 **Q.** And what time was lunch or chow?

24 **A.** Chow runs from about 11:00, 11:30, 11:45, so yard usually
25 open back up about 1:00, 1:15. Sometimes earlier.

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1 Q. And do you remember what time your assignment or job was?

2 A. Yes. It was from 2:30 to 10:30.

3 Q. In the afternoons/evening?

4 A. Yes.

5 Q. Do you remember when dinnertime was, chow, dinner?

6 A. Yes. Dinner was around 5:00, 5:30-ish.

7 Q. Randle, Mr. Griffin, can you go outside whenever you want
8 in prison?

9 A. Yes. As soon as the yard is open, yes.

10 Q. Well, I meant at any time. If you wanted to go at
11 6:00 a.m., could you choose the time you go outside or does it
12 have to be --

13 A. It has to be a particular time whenever the yard is open.

14 Q. So you can't go whenever you want?

15 A. No.

16 Q. Can you turn out the lights in your cell at any time?

17 A. Yes.

18 Q. You could do that in the Housing Unit 2?

19 A. Yes.

20 Q. Did you at some point become comfortable at Gus Harrison
21 Correctional Facility before this incident happened?

22 A. Oh, yes, I did. Like I said, I made a life for myself. I
23 had friends. I had a good job, no worries. You know, I was
24 content living there. That's all basically I had to live, my
25 job and the few activities that I had. Other than that, I

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1 didn't have anything else, wasn't nothing else to live for. In
2 prison that's all we have got, dignity that we have, these jobs
3 and the privileges that we earn for being in that hell.

4 Q. You became comfortable with that at some point?

5 A. Yes, very comfortable.

6 Q. Is racial tension a part of prison life?

7 A. It depends on what facility you are at, but yes, it is.

8 Q. Did these defendants further the racial tensions at the
9 facility?

10 A. Yes, they did, yes.

11 Q. The representatives of the warden's forum in Housing Unit
12 2, they had titles, right, certain reps?

13 A. You had a white rep and you've got a black rep.

14 Q. And that literally means a black person and a white person
15 would serve on the warden's forum?

16 A. Yes.

17 Q. And that was the designation?

18 A. Yes.

19 Q. Do you hear correctional officers use racial slurs?

20 A. No, I never heard. Not lately, but years ago, I heard it
21 before. When I first got locked up, yes, I was called a porch
22 monkey, all types of ...

23 MR. SCHNEIDER: Your Honor, I'm going to object to
24 lack of relevance. That's not related to this case here.

25 MR. FINK: I'll move on, Your Honor.

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1 **THE COURT:** I'm sorry, I didn't hear what your
2 objection was.

3 **MR. SCHNEIDER:** Yes, Your Honor. Lack of relevance.

4 **MR. FINK:** I'll move on, Your Honor.

5 **THE COURT:** As far as we are at this break, I want to
6 make sure that you are all right.

7 **JUROR NO. 4:** I'm okay. Do you have a tissue?

8 **THE COURT:** Excuse me?

9 **JUROR NO. 4:** Do you have a tissue?

10 **THE COURT:** Yes. Would you ...

11 **JUROR NO. 4:** Sorry. Thank you. Just a little cold
12 going on. I apologize.

13 **MR. FINK:** Should I present the juror with some
14 water?

15 **JUROR NO. 4:** I have water. Thank you.

16 **THE COURT:** Thank you.

17 **BY MR. FINK:**

18 **Q.** Mr. Griffin, do you know one of the defendants in this
19 case, Defendant Condon?

20 **A.** Yes, I do.

21 **Q.** And can you identify him for the jury, please?

22 **A.** The gentleman in the suit with the blue shirt, glasses.

23 **Q.** That's Defendant Condon?

24 **A.** Yes.

25 **Q.** How did you come to know Defendant Condon?

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1 **A.** Well, he was the unit manager.

2 **Q.** Is that the RUM that you described earlier?

3 **A.** Yes.

4 **Q.** What was your impression of Defendant Condon before
5 January of 2011, so the first few months that you were at
6 Gus Harrison?

7 **A.** He was really standoffish. He really didn't like
8 socializing with prisoners. He used to always have his door
9 closed. He always had a sign up like he was busy. So he
10 didn't like to associate with prisoners.

11 **Q.** What did you observe of his relationship with other
12 correctional officers, if anything?

13 **A.** It was, it was real blue blind, you know, like the police
14 have. He always had their back, no matter what they did.
15 Whether it was right or wrong, he had their back.

16 **Q.** Do you remember any significant incidents involving
17 Defendant Condon in approximately January of 2011?

18 **A.** Yes. In late January, sometime around there, I was in the
19 dayroom and I saw a young kid Bryant trying to go to protective
20 custody, and he went to the officers' desk. They called for
21 backup. Other officers came. The kid was just trying to lock
22 up in fear for his safety. So he stood there with his duffle
23 bag. He had some envelopes for his mother and family.

24 And I saw Condon come out of his office and grab the kid
25 and roughed him up and then snatched his duffle bag out of his

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1 hand. He was just a little kid. He was not a real big guy.
2 In a real aggressive manner. I was looking like, wow, why is
3 he doing this kid like that? He's not trying to hurt nobody.
4 So that's what I remember happening.

5 Q. How big is Jeffrey Bryant, if you remember?

6 A. He's a little guy. If I remember right, he couldn't have
7 been no taller than 5'6", weigh about 140 pounds. Little guy.
8 He was not a real big guy.

9 Q. What is protective custody? You described he wanted to go
10 to protective custody. What is that, as far as you know?

11 A. Protective custody is when you in fear for your safety or
12 your life, it's a right that you have to go to protective
13 custody no matter if it's from other prisoners or staff. You
14 have that right to go to protective custody if you invoke it,
15 and they supposed to accommodate you and allow you to go to
16 protective custody.

17 Q. Do you know why he wanted to go to protective custody?

18 A. Yes. He told me why he wanted to go.

19 Q. What did he say?

20 MR. SCHNEIDER: Object to hearsay.

21 MR. FINK: It's not hearsay, Your Honor, because it's
22 offered for what he told Mr. Griffin as opposed to whether it's
23 true or not.

24 THE COURT: The question was?

25 MR. FINK: The question is why did he want to go to

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1 protective custody or what did he state was the reason why he
2 wanted to go to protective custody. It's goes to show that
3 Mr. Griffin heard it and complete the story as to why he
4 helped.

5 **THE COURT:** Well, overruled for the time being, but
6 if it goes much farther, it will be a problem.

7 **MR. FINK:** Understood, Your Honor. Thank you.

8 **BY MR. FINK:**

9 **Q.** What was your understanding of why he wanted to go to
10 protective custody?

11 **A.** Well, he was in fear for his safety from the officers
12 because they had been writing him multiple, multiple
13 misconducts. The kid had parole. He was trying to go home,
14 you know, and he was scared. He said he was trying to go to
15 protective custody. He was trying to go home.

16 **Q.** That is one way to keep someone from parole is to write
17 tickets?

18 **A.** Oh, yeah. They will take your parole away.

19 **Q.** Did you take any action following this incident that you
20 observed?

21 **A.** Yes.

22 **Q.** What did you do?

23 **A.** Bryant asked me to give the ombudsman a statement about
24 what happened so I wrote the ombudsman on his behalf.

25 **Q.** What is the ombudsman as far as you know?

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1 **A.** It's a legislative government agency who oversees, watches
2 other the prisoners and respond to any prisoner abuses. That's
3 what they are.

4 **Q.** Do you know the full name of it?

5 **A.** Legislative ombudsman.

6 **Q.** It's an arm of the State?

7 **A.** Yes.

8 **Q.** Had you had any experience with the ombudsman in the past?

9 **A.** Yes, I had experience with them.

10 **Q.** How was your experience with communicating with the
11 ombudsman in the past?

12 **A.** Well, any time you write the ombudsman they always
13 respond. It's hard to really prove any wrongdoing, but they
14 will respond and send a letter, let you know, okay, we did an
15 investigation, we can't prove it. They let you know that
16 someone there, someone cares, you know. They always look into
17 any claims. If you have a medical issue, if you have abuse,
18 they will look into that as well.

19 **Q.** Do you see the ombudsman from your perspective as an
20 incarcerated prisoner as serving an important function?

21 **A.** Oh, yeah. They are our heros in prison.

22 **Q.** They are what?

23 **A.** Our heros because they are the only ones who are allowed
24 to come in the prison and address our issues with us in the
25 prison. Other than that, there is nobody else. We wouldn't

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1 have anybody. We would just be at the mercy of whatever goes
2 on in the prison.

3 Q. So they are a watchdog of the prison?

4 A. Yes.

5 Q. Now, you said you wrote the ombudsman on Bryant's behalf.
6 Can I just step back just for a moment, Mr. Griffin. You said
7 it was a "violent" assault was the word you used. Can you
8 describe exactly what Defendant Condon did to 5'6", 145-pound
9 Jeffrey Bryant that was violent?

10 A. Oh, yeah. He came out of his office like a bull. I'm
11 like wow. He ran up, grabbed the kid by the arm and grabbed
12 his bag trying to separate him and his bag. He was snatching
13 him around by his -- he had his coat and shirt, ball it up in
14 his hand. He was just shaking the kid. I didn't understand
15 it. The kid was just trying to go to protective custody.

16 Q. Because he was in fear of the guards?

17 A. Yes.

18 Q. You said you wrote the ombudsman on Bryant's behalf.
19 What, if anything, do you remember happening next related to
20 the ombudsman?

21 A. The ombudsman sent an investigator into the facility.

22 Q. Do you remember who that investigator was?

23 A. Yes, Jessica Zimbelman.

24 Q. One more time.

25 A. Jessica Zimbelman.

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1 Q. Jessica Zimbelman. How do you know she came to the
2 facility?

3 A. Because I was asked to interview with her.

4 Q. You were asked by the ombudsman's investigator to
5 interview with her?

6 A. Yes.

7 Q. Do you remember what Jessica Zimbelman looks like?

8 A. Tall, slim white female. Young, about mid to late 20s.

9 Q. Okay.

10 A. Yes.

11 Q. Do you remember approximately when, and I know you might
12 not remember particular dates, but approximately when she came
13 to the Gus Harrison Correctional Facility to investigate this
14 assault?

15 A. I'm thinking early February. Yes, early February.

16 Q. Of which year?

17 A. 2011.

18 Q. Early February 2011.

19 A. Yes.

20 Q. You described the housing unit earlier.

21 A. Yes.

22 Q. Where did Jessica Zimbelman come to interview you, which
23 we'll talk about?

24 A. In the first counselor's office when you get into the
25 unit. The first office right there when you get into the unit.

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1 Q. So what you described earlier was an ARUS office?

2 A. Yes.

3 Q. Now, just for clarification and so the jury is aware of
4 your testimony, what does the officers' desk look at when
5 facing forward in the base of the housing unit?

6 A. Oh, they see, they can look at each ARUS office and the
7 RUM office as well as each wing.

8 Q. So the correctional officers in the housing unit are
9 looking directly at these offices?

10 A. Yes, they are glass.

11 Q. Now, where is Defendant Condon's office in relationship to
12 where you met with Jessica Zimbelman?

13 A. Right next door.

14 Q. You met with Jessica Zimbelman in the room next door to
15 Defendant Condon's office?

16 A. Yes.

17 Q. How did that come to happen? How were you interviewed?
18 How did you find out you were going to be interviewed?
19 Describe that situation.

20 A. I was in the dayroom. An officer called and said did I
21 have an interview with the ARUS, I mean with the ombudsman. I
22 said, "Yes." He said, "Well, get over there."

23 So I went over there and stood by the window while she was
24 talking with the young kid Bryant who had been assaulted. And
25 then Bryant waived me into the office, and I went into the

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1 office and explained to her what I had witnessed.

2 Q. What did you tell her?

3 A. I told her that I witnessed they had been writing the kid
4 false misconducts and I watched RUM Condon assault the kid.
5 The kid didn't do anything.

6 I explained to her that the guys in the unit was in an
7 uproar about it, they was really upset, and she told me to tell
8 the guys to calm down, that nothing was going to happen.

9 Q. How long would you say you were in there interviewing with
10 Jessica Zimbelman?

11 A. About ten minutes.

12 Q. Did anything happen when you came out the door?

13 A. No.

14 Q. Did Jessica Zimbelman do anything further as far as you
15 know?

16 A. Yes. When she left out of that office, she went into the
17 middle dayroom behind the officers' desk, which is the rec
18 room, and asked questions of other prisoners freely, asked them
19 did they have problems getting their statements and things like
20 that.

21 Q. So this is a female in plain street clothes that is just
22 wandering the housing unit?

23 A. No, she's not wandering. She's accompanied by the
24 administrative assistant.

25 Q. But she's in the housing unit?

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1 **A.** She's in the housing unit walking around, yes.

2 **Q.** Have you ever observed in the past, notwithstanding this
3 interaction with the ombudsman, have you ever observed in the
4 past the ombudsman visiting a correctional facility?

5 **A.** Yes, they visit all the time.

6 **Q.** Where do they tend to have visits?

7 **A.** In the unit.

8 **Q.** The unit being?

9 **A.** The housing unit.

10 **Q.** Where presumably the correctional officers who watch the
11 housing unit are, correct?

12 **A.** Yes.

13 **Q.** Now, taking you forward, Mr. Griffin, after the
14 ombudsman's meeting about the assault by Defendant Condon, did
15 you at some point obtain a job at the prison?

16 **A.** Yes, I had -- it was called a rec porter. My job was to
17 pass out the rec equipment and to keep the dayroom clean, to
18 keep track of all the games and things like that.

19 **Q.** What did you call the job?

20 **A.** A recreational porter.

21 **Q.** You basically clean up the dayrooms?

22 **A.** Yeah.

23 **Q.** How much did you make at that job as a rec porter?

24 **A.** I think like \$43 a month.

25 **Q.** \$43 a month. How does it work to be a porter? Strike

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1 that. Let's back up.

2 You testified earlier, what time was your porter detail or
3 your job to be a porter, what times?

4 **A.** 2:30 to 10:30 p.m.

5 **Q.** On a typical day for a porter, 2:30 p.m., how do you start
6 your job and what do you do?

7 **A.** Well, when you come up on base, you have to ask the
8 officer to allow you to get into the supply closet to get your
9 supplies because it's always locked. So you go to the desk,
10 ask the officers, "I need to get my supplies, will you let me
11 in." They do that, then I get my assignment.

12 **Q.** So you have to have an officer's cooperation to open the
13 supply closet for you?

14 **A.** Yes.

15 **Q.** So is that how you check in?

16 **A.** Yes, I guess. I guess that is the check-in, I guess.

17 **Q.** Was there any -- did you have to write your name down
18 anywhere?

19 **A.** No.

20 **Q.** Did you have to say anything to the guards like, "Hey, I'm
21 here for work"?

22 **A.** No.

23 **Q.** So the only thing you would do at 2:30 p.m. when your
24 porter job starts, you needed to get into the supply closet?

25 **A.** Yes.

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1 Q. Nothing was written down?

2 A. No.

3 Q. Has Officer Condon ever opened up the supply closet for
4 you?

5 A. Yes.

6 Q. Has Officer McMurtrie ever opened up the supply closet for
7 you?

8 A. Yes.

9 Q. So after this period you had your job. Did you at some
10 point get elected to the warden's forum?

11 A. Yes, I was elected to the forum. I was going to the
12 weekly meetings.

13 Q. Approximately when did you get -- are we still in
14 February? What time frame?

15 A. It was like early February.

16 Q. Okay.

17 A. Early -- I think February the 5th I was elected to the
18 warden's forum.

19 Q. Sometime around February 5th you were elected to the
20 warden's forum?

21 A. Yes.

22 Q. Now, you said earlier the warden's forum -- well, I'll let
23 you describe it briefly, the warden's forum role in the prison.

24 A. It's just to take issues that prisoners have so that they
25 can have a voice to the warden. First we got to take them to

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1 the RUM. You've got to take it to him first. If he can't
2 resolve it, then you take it to the warden. So that's what we
3 do.

4 Q. Kind of like a student council?

5 A. Yes.

6 Q. Are there elections?

7 A. Yes, there are elections. We have -- they pass out
8 ballots and then the guys -- you have to get the majority vote.

9 Q. And you won the majority vote?

10 A. Yes.

11 Q. Do you guys have meetings?

12 A. Yes, we have four representative meetings and one warden's
13 forum meeting.

14 Q. Do you follow any rules at the meeting, have agendas?

15 A. Yeah, we follow Robert's Rules of Order.

16 Q. Did you say you use Robert's Rules?

17 A. Yeah, Robert's Rules of Order. Yeah, I had to teach them
18 that because they didn't know it. I had to teach them that.

19 Then we get together. Everybody comes. We have what's
20 called an agenda to be presented to the warden. We all agree
21 on it, then we submit it to the warden assistant or whoever is
22 there because he's right there with us all the time. So when
23 we get through with our agenda, we give it to him, and he takes
24 it up front to be processed so when we go to the actual meeting
25 the warden will have a copy of these issues.

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1 Q. Did the warden's forum give you purpose?

2 A. Yes. Yes, it gave me purpose.

3 Q. In what way?

4 A. It allowed me to feel as if I had a purpose in life doing
5 something other than just jail. You know, I was able to help
6 other prisoners when they had a problem. You know, I felt like
7 what I was doing meant something, you know, and you was able to
8 affect change in ways that was positive and help the prisoner
9 population so I liked that.

10 And it also allowed me to learn how to speak with
11 administrators and things of that nature, and I really, you
12 know, I really liked that. So it gave me purpose.

13 Q. So at this point, Randle, through your testimony here, as
14 we talked about the assault that you allegedly witnessed and
15 the ombudsman and your porter duty and the warden's forum, at
16 this point in February 2011 how would you describe your
17 circumstances at Gus Harrison? Were you comfortable or not?

18 A. At what time?

19 Q. Were you comfortable at Gus Harrison at that point?

20 A. I didn't get the dates you said.

21 Q. In February of 2011 you've got the warden's forum, your
22 job, and all of this. Were you comfortable at Gus Harrison at
23 that point before any of the relevant conduct happened?

24 A. Yes, I was real comfortable, but as time went on, that
25 dissipated fast.

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1 **MR. FINK:** Your Honor, I'm about to get into the
2 relevant conduct, which will be probably about 45 minutes to an
3 hour of testimony. I'm happy to start it. I just thought I
4 would bring it to the Court's attention that this was a shift
5 in the plaintiff's testimony.

6 **THE COURT:** I think I understand what you're saying.
7 You're saying that from the point of view of putting your case
8 in you would prefer to start fresh tomorrow morning and not go
9 into it right now.

10 **MR. FINK:** I don't think it will extend the trial any
11 longer, and if the Court is agreeable to that, I think this is
12 a logical time to stop.

13 **THE COURT:** Unless there's some objection on
14 Mr. Schneider's side.

15 **MR. SCHNEIDER:** No, if he says it's not going to
16 extend the trial, I'm fine with that, Your Honor.

17 **THE COURT:** Very well. Anything you want to do to
18 wind down here?

19 **MR. FINK:** I think I'm comfortable with this stopping
20 point, Your Honor, and we'll pick up his testimony first
21 thing --

22 **THE COURT:** All right. Then why don't, why don't we
23 have the witness leave -- you are not excused, but leave the
24 witness box and go back to counsel table.

25 **THE WITNESS:** Okay.

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1 **THE COURT:** Thank you. It's going to get you out of
2 here a little bit earlier than you might get out, but let me
3 give you some instructions about what you do when you're not
4 here. You must not discuss the case with anyone, including
5 your family, neighbors, friends, business associates and fellow
6 jurors at any time during this trial. You must not permit
7 anyone to attempt to discuss it with you or in your presence.
8 If anyone persists in talking with you about the case despite
9 your request not to do so, report this to me by a note as soon
10 as possible. However, don't discuss such a matter with any of
11 your fellow jurors.

12 Furthermore, in order to avoid the appearance of
13 impropriety, you must not have any conversation with the
14 parties, lawyers, with the witnesses or anyone else who you may
15 come to recognize as having some connection with this case in
16 or out of the courtroom during your service as a juror.

17 Do not talk with anyone who is associated with the case,
18 not even to pass the time of day. In no other way can all of
19 the parties be assured of the impartiality with which they are
20 entitled to from you as jurors.

21 With that in mind, you may not communicate with anyone
22 about this case by your cell phone or Blackberry or email or
23 iPhone. You can't do any text messages or Twitter or through
24 any blog or website, through any internet chat room or by way
25 of social networking. At least somebody has told us that

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1 anyway. You may not permit anybody to communicate with you or
2 accept any communications that are directed to you having
3 anything whatsoever to do with this trial.

4 You must also avoid reading any newspaper articles that
5 might be published. If a newspaper headline catches your eye,
6 don't read it. Refrain from listening to or observing any news
7 program on television or radio which mentions this case. Media
8 accounts may be inaccurate and may contain matters which are
9 not proper evidence for your consideration. You must base your
10 verdict solely on what is presented in the courtroom.

11 Don't conduct any research or undertake any investigation
12 of this case on your own.

13 Finally, don't form any opinions until all of the evidence
14 has been presented. Keep an open mind until you start
15 deliberations at the end of the case.

16 The reason for these cautions, of course, is because it's
17 your duty to decide the case solely on the basis of the
18 testimony and the evidence that is presented during the trial
19 without any consideration of any other matters.

20 I may, although I haven't got into it very much, I hope I
21 don't, telling lawyers for one side or the other or both sides
22 that they shouldn't be doing what they want to do, that they've
23 got to stop it. I say I haven't had a lot of occasion to do
24 that in this case, but I might. If I do that, don't take that
25 as any evidence of the culpability of the person represented by

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1 the lawyer. It has nothing to do with that. It should not be
2 given that consideration in your mind. And I, as I said, there
3 may not be any of it at all. It's going pretty well at this
4 point.

5 Thank you for your patience. Be here at nine o'clock
6 tomorrow morning. I may -- not just you but everybody --
7 seeing as the members of the jury panel got here, got here on
8 time, was ready to go, I hope you will be tomorrow too at
9 nine o'clock, all of us ready to go and get this case moving.

10 And I will commit to you that I will do my very best to
11 keep the case moving at a good speed assuming I can do it in
12 fairness to the parties, to the defendant and to the
13 plaintiff -- to the defendants. If I can do it in fairness to
14 everybody seated at the table over there, tables, I will, but
15 if I can't, I'll have to spend a little time letting the
16 counsel know whatever it is I need them to do, but I don't
17 think I'm going to need to based on what I have seen so far,
18 the lawyers and what they are doing here. I don't think I will
19 do that very much. Maybe not at all.

20 Please, I hope it's not raining out. I hope. Be careful.
21 By now it might be pretty slippery. If it is, be careful. See
22 you tomorrow morning at 9:00. Please go to the jury room. You
23 are now excused for the day to come back here at 9:00 tomorrow.
24 Thank you.

25 And it would be -- I want to be sure you, Ms. Quinkert,

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1 are all right.

2 **JUROR NO. 4:** I am. Thank you.

3 **THE COURT:** If you are not, say so.

4 (Jury out at 12:14 p.m.)

5 **THE COURT:** Do either plaintiff or defendants wish
6 the record to reflect anything right now?

7 **MR. FINK:** Not at this time for plaintiff.

8 **MR. SCHNEIDER:** Not for the defense, Your Honor.

9 **THE COURT:** All right. Have a good safe night out
10 there. I hope you stay dry out there. Thank you.

11 **MR. FINK:** Thank you, Your Honor.

12 **MR. SCHNEIDER:** Thank you.

13 (Proceedings adjourned at 12:15 p.m.)

14 - - -

15

16 **C E R T I F I C A T I O N**

17 I certify that the foregoing is a correct transcription of
18 the record of proceedings in the above-entitled matter.

19

20 s/ Sheri K. Ward
21 Sheri K. Ward
Official Court Reporter

2/6/2017
Date

22 - - -

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25